

What Are Patents, Trademarks, Servicemarks, and Copyrights?*

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Do Trademarks, Copyrights and Patents protect the same things?

No. Trademarks, copyrights and patents all differ. A copyright protects an original artistic or literary work; a trademark protects a name or logo; and a patent protects an invention. Taken together, patents, copyrights, and trademarks are all forms of intellectual property protection and are used to secure and protect the owner's rights in their intellectual property. Some people confuse patents, copyrights, and trademarks and use the terms interchangeably. Although there may be some similarities among these kinds of intellectual property protection, they are actually quite different and serve different purposes. Selecting the appropriate type of protection can be an important part of the growth and development of a business.

What is a Patent?

A patent for an invention is the grant of a property right to the inventor, issued by the United States Patent and Trademark Office (USPTO). Generally, the term of a new patent is 20 years from the date on which the application for the patent was filed in the United States or, in special cases, from the date an earlier related application was filed, subject to the payment of maintenance fees. U.S. patent grants are effective only within the United States, U.S. territories, and U.S. possessions. Under certain circumstances, patent term extensions or adjustments may be available.

The right conferred by the patent grant is, in the language of the statute and of the grant itself, "the right to exclude others from making, using, offering for sale, or selling" the invention in the United States or "importing" the invention into the United States. What is granted is *not* the right to make, use, offer for sale, sell or import, but the right to *exclude* others from making, using, offering for sale, selling or importing the invention. Once a patent is issued, the patentee must enforce the patent without aid of the USPTO.

There are three types of patents:

- 1) **Utility patents** may be granted to anyone who invents or discovers any new and useful process, machine, article of manufacture, or composition of matter, or any new and useful improvement thereof;
- 2) **Design patents** may be granted to anyone who invents a new, original, and ornamental design for an article of manufacture; and
- 3) **Plant patents** may be granted to anyone who invents or discovers and asexually reproduces any distinct and new variety of plant.

What is a Trademark or Service Mark?

A trademark is a word, name, symbol, or device that is used in trade with goods to indicate the source of the goods and to distinguish them from the goods of others. A servicemark is the same as a trademark except that it identifies and distinguishes the source of a service rather than a product. The terms “trademark” and “mark” are commonly used to refer to both trademarks and servicemarks.

Trademark rights may be used to prevent others from using a confusingly similar mark, but not to prevent others from making the same goods or from selling the same goods or services under a clearly different mark. Trademarks which are used in interstate or foreign commerce may be registered with the USPTO.

- A **trademark** is a word, phrase, symbol or design, or a combination of words, phrases, symbols or designs, that identifies and distinguishes the source of the goods of one party from those of others.
- A **service mark** is the same as a trademark, except that it identifies and distinguishes the source of a service rather than a product. The terms “trademark” and “mark” are often used to refer to both trademarks and service marks.

Is registration of my trademark required?

No. You can establish rights in a mark based on legitimate use of the mark. However, owning a federal trademark registration on the Principal Register provides several advantages, e.g.,

- constructive notice to the public of the registrant’s claim of ownership of the mark;
- a legal presumption of the registrant’s ownership of the mark and the registrant’s exclusive right to use the mark nationwide on or in connection with the goods and/or services listed in the registration;
- the ability to bring an action concerning the mark in federal court;
- the use of the U.S registration as a basis to obtain registration in foreign countries; and
- the ability to file the U.S. registration with the U.S. Customs Service to prevent importation of infringing foreign goods.

When can I use the trademark symbols TM, SM and ®?

Any time you claim rights in a mark, you may use the “TM” (trademark) or “SM” (service mark) designation to alert the public to your claim, regardless of whether you have filed an application with the USPTO. However, you may use the federal registration symbol “®” **only** after the USPTO actually *registers a mark*, and **not** while an application is pending. Also, you may use the registration symbol with the mark only on or in connection with the goods and/or services listed in the federal trademark registration.

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What Is a Copyright?

Copyright is a form of protection provided to the authors of “original works of authorship” including literary, dramatic, musical, artistic, and certain other intellectual works, both published and unpublished. The 1976 Copyright Act generally gives the owner of copyright the exclusive right to reproduce the copyrighted work, to prepare derivative works, to distribute copies or phonorecords of the copyrighted work, to perform the copyrighted work publicly, or to display the copyrighted work publicly.

The copyright protects the form of expression rather than the subject matter of the writing. For example, a description of a machine could be copyrighted, but this would only prevent others from copying the description; it would not prevent others from writing a description of their own or from making and using the machine. Copyrights are registered by the Copyright Office of the Library of Congress.

Is registration of my copyright required?

No. Your rights are established at the time the work is “fixed in tangible form” and no official registration is necessary. However, registering your copyright with the Library of Congress can provide additional protection and certain valuable rights should you need to sue somebody who has infringed your rights under copyright law. Accordingly, you should register your copyright if you wish to have the most extensive protection possible under the law.

***Legal Disclaimer.**

The information presented herein is designed to provide general information about certain legal principles related to intellectual property law. This area of the law is subject to change over time and, accordingly, this information may be outdated at the time it is read. This information should not be construed as legal advice and should not be relied on for legal guidance as to any specific situation. For specific advice on any legal issue, you should consult a legal professional.

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